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July 25, 1996

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Mr. William F. Caton
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Communication -- CC Dkt. No. 95-185

Dear Mr. Caton:

On Thursday, July 25, 1996, I delivered the attached letter regarding the above-captioned proceeding to the following Commission Staff:

Chairman Reed Hundt
Commissioner James H. Quello
Commissioner Rachelle B. Chong
Commissioner Susan Ness
Ms. Regina Keeney, Chief, Common Carrier Bureau
Ms. Michele Farquhar, Chief, Wireless Telecommunications Bureau
Mr. Richard Metzger, Deputy Chief, Common Carrier Bureau
Mr. Richard Welch, Chief, Policy and Program Planning Division

Pursuant to Section 1.1206 of the Commission's rules, I submit one original and one copy of this letter to be filed with your office.

Please do not hesitate to contact me with any questions regarding this submission.

Respectfully submitted,

Michael K. Kellogg /hsr

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July 25, 1996

The Honorable Reed Hundt
Chairman
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: Ex Parte Communication - CC Dkt. No. 95-185

Dear Chairman Hundt:

I am writing on behalf of Pacific Telesis Group to express its strong support for the basic points raised by Representative Coburn and his congressional colleagues in their July 16, 1996, letter to your office ("Coburn letter"). There is one point in the letter, however, that we want to be certain is not misunderstood.

The letter states that "in 1993, Congress explicitly gave the [Commission] jurisdictional authority over commercial mobile radio service providers (CMRS). . . . As a result, the regulatory framework embodied in section 332 specifically exempts the CMRS industry from state and local entry regulation, or regulation of the rates charged by any [CMRS] provider." That statement is correct: it says that Section 332, as amended by the 1993 Budget Act, exempts from state regulation the rates charged by CMRS providers to subscribers. As explained in my Ex Parte letters of March 13, 1996 and February 26, 1996 in this docket, it is emphatically not the case that Section 332 gives the Commission exclusive jurisdiction over CMRS interconnection agreements or otherwise trumps the 251/252 regime of private negotiation, subject to state approval and arbitration.

The 1993 Budget Act did not "federalize" CMRS, but merely deregulated local CMRS rates. See Second Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1480 (1994) ("revised Section 332 does not extend the Commission's jurisdiction to the regulation of local CMRS rates"). Moreover, the Commission has held that Section 332(c)(3)(A) only covers the rates charged by CMRS providers to subscribers, not LEC-CMRS interconnection agreements. See Report and Order, Petition on Behalf of the Louisiana Public Service

Comm'n for Authority to Retain Existing Jurisdiction Over Commercial Mobile Radio Services Offered Within the State of Louisiana, 10 FCC Rcd 7898, 7908 (1995) (Section 332(c)(3)(A) does not deprive states of jurisdiction over interconnection compensation agreements). Finally, the Commission has always distinguished between a federal right to physical interconnection (to protect interstate services) and state regulation of intrastate interconnection rates. See Declaratory Ruling, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 2 FCC Rcd 2910, 2912 (1987). The two matters are separable and nothing on this score was changed by the 1993 Budget Act.

Not only would the Commission have to overrule these three prior decisions to preempt state regulation of CMRS interconnection agreements, but it would also have to contradict Sections 251 and 252 of the 1996 Act. CMRS providers fall within the definition of a "requesting telecommunications carrier" seeking interconnection "for the transmission and routing of telephone exchange service and exchange access." 47 U.S.C. 251(c)(2)(A).[1] They are also eligible for "reciprocal compensation arrangements for the transport and termination of telecommunications" under Section 251(b)(5). Certainly, nothing in the 1996 Act warrants disparate treatment for different technologies. Sections 251 and 252 do not distinguish CMRS from landline technologies. And, for the reasons summarized above, the 1993 Budget Act cannot support importing such a distinction into the new statute.

Thus, interconnection agreements between CMRS providers and incumbent LECs are governed by the 251/252 scheme of private negotiations, subject to arbitration and approval by State Commissions. The FCC itself has no role in specific agreements unless negotiations break down and a State Commission simply fails to act. See § 252(e)(5).

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[1] See, e.g., Memorandum Opinion and Order, The Need to Promote Competition and Efficient Use of Spectrum for Radio Common Carrier Services, 59 Rad. Reg. 2d (P&F) 1275 (Mar. 5, 1986) ("In view of the fact that cellular carriers are generally engaged in the provision of local, intrastate, exchange telephone service, the compensation arrangements among cellular carriers and local telephone companies are largely a matter of state, not federal, concern.").

Finally, I should note that, even if the Commission did have authority to mandate particular CMRS compensation arrangements, it could not lawfully mandate a bill-and-keep arrangement. Not even state regulators can do that. The terms "reciprocal compensation" and "mutual and reciprocal recovery" in Sections 251(b)(5) and 252(d)(2)(A) clearly demonstrate that Congress contemplated some form of interconnection cost recovery. Bill-and-keep arrangements, in contrast, permit no cost recovery. The parties may agree to "waive mutual recovery." § 252(d)(2)(B)(i). But waiver is a voluntary process. It cannot be forced. Thus, regulators have no authority to mandate bill-and-keep arrangements.

In sum, the Coburn letter makes many excellent points with which we are in complete agreement. We here simply want to ensure that it is not misunderstood and clarify that CMRS interconnection agreements are not somehow exempted from the 251/252 regime, and that bill-and-keep would in any case be an impermissible scheme for the Commission to mandate.

Respectfully submitted,

Michael K. Kellogg /bas

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